(47)

HIGH COURT OF CHHATTISGARH: BILASPUR

Writ Petition (C) No. 2339 of 2007

Petitioners Defendants

1) Nand Lal Sahu ageds about 67 years, S/o. Shri Mohan Sai Sahu.

2) Motilal Sahu aged about 45 years, S/o. Nandlal Sahu.

3) Anjoo Kumar Sahu aged about 34 years, S/o. Nandlal Sahu.

4) Arjun Lal Sahu aged about 56 years, S/o. Nandlal Sahu.

5) Smt. Shakun aged about 44 years, Wd/o Late Bheekham Sahu.

6) Ku. Sunita Sahu aged about 17 years, Minor D/o. Late Shri Bheekham Sahu, through Mother Smt. Shakun Sahu, widow of Late Bheekham Sahu.

7) Pawan Kumar Sahu aged about 15 years, S./o. Late Bheekham Sahu, Minor, through Mother Smt. Shakun Sahu, widow of Late Bheekham Sahu.

8) Ku. Pooja Sahu aged about 13 years, D/o. Late Bheekham Sahu, Minor through: Mother Smt. Shakun Sahu widow of Late Bheekham Sahu.

9) Keshaw Sahu aged about 11 years, S/o. Late Bheekham Sahu, Minor through: Mother Smt. Shakun Sahu widow of Late Bheekham Sahu.

All residents of Purani Basti Korba, Tahsil and District Korba, CG.

Versus

Respondents Plaintiff

1) Mani Lal Sahu aged about 39 years, S/o. Shri Nandklal Sahu R/o. Purani Basti Korba, Tahsil

and Dist. Korba, CG.

2) State of Chhattisgarh through the Collector, Korba.

(Writ Petition under Articles 226/227 of the Constitution of India)

SB: Hon'ble Shri Justice Satish K. Agnihotri

Present:

Shri Arun Kumar Agrawal, counsel for the petitioners.
Ku. Dipali Pandey, Panel Lawyer for respondent No.2/State.

ORAL ORDER

(Passed on 30th April 2007)

By this petition, the petitioners impugn the order dated 22-3-2007 (Annexure P/1) passed by Civil Judge, Class I, Korba, Dist. Korba, in pending Civil Suit No. 12-A/2006, allowing the application filed under Order 6, Rule 17 of the Code of Civil Procedure (for short, "the Code"), seeking amendment in the plaint.

2) Learned Civil Judge allowed the application for amendment on the ground that the suit was filed for partition, declaration and permanent injunction. The plaintiff/respondent No.1 wanted to delete the word "partition" to avoid payment of stamp court fee. When the plaintiff/respondent No.1 was directed to make good of shortage of stamp court fee, he filed an application for amendment by deleting the word "partition" and converting the same to the suit for declaration and permanent injunction.

3) The Court below held that the relief for declaration and permanent injunction can be sought for independently and it is not necessary for the plaintiff/respondent No.1 to seek a relief of partition. It is for the plaintiff/respondent No.1 to amend the suit for appropriate relief accordingly. Thus, this prayer was allowed.

(49)

4) Being aggrieved, the petitioners/defendants have filed this petition questioning the legality and validity of the order permitting amendment in the plaint.

5) It is well settled that merits of the averments sought to be incorporated by way of amendment not to be adjudged at the stage of admission. The amendment in the pleadings should be granted liberally. In view of that, I do not find any illegality or irregularity or procedural error in the impugned/judgment order passed by the Court below.

6. It is well settled principle of law that under Article 227 of the Constitution of India, this Court has jurisdiction of judicial review of the order passed by the Court below, in the event, there is manifest and apparent error on the face of the proceedings based on the clear ignorance or utter disregard to the provisions of law or there is grave failure of justice or grave injustice has occasioned thereby. Further, this Court can also entertain the petition if there is perversity, irregularity or illegality in the process of decision, not in the decision itself.

7. Applying the above settled principles of law to the facts of the present case, it does not warrant an interference with the decision passed by the court below.

8. Thus, this petition is dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Raju